

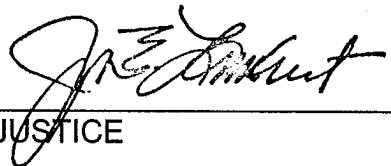
Supreme Court of Kentucky

ORDER

IN RE: **PRETRIAL DIVERSION RULES FOR THE 26th JUDICIAL DISTRICT OF
HARLAN COUNTY**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of the District Court, and being otherwise sufficiently advised: The Pretrial Diversion Rules for the 26th Judicial District, of Harlan County, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered: January 24, 2008.



CHIEF JUSTICE

Harlan District Court Misdemeanor Failure of Owner to Maintain Required Insurance/Security First Offense Pretrial Diversion Rules

I. ELIGIBILITY REQUIREMENTS

A. ALL PERSONS CHARGED WITH NO INSURANCE, FIRST OFFENSE, SHALL BE ELIGIBLE FOR PARTICIPATION IN THE DIVERSION PROGRAM AS AN ALTERNATIVE TO CRIMINAL PROSECUTION SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. A PRIOR CONVICTION FOR NO INSURANCE SHALL PRECLUDE ELIGIBILITY.**
- 2. ANY PERSON WHO HAS PREVIOUSLY PARTICIPATED IN A DIVERSION PROGRAM IN THIS COUNTY OR ANY OTHER JURISDICTION WITHIN OR WITHOUT THE COMMONWEALTH OF KENTUCKY SHALL NOT BE ELIGIBLE FOR PARTICIPATION IN THE DIVERSION PROGRAM.**

B. A DIVERSION REPORT SHALL BE PREPARED BY THE PRETRIAL SERVICE OFFICE OF THE COURT AND SHALL CONTAIN BASIC PRETRIAL INFORMATION, RECORD OF ANY PAST OFFENSES AND CONVICTIONS, RECORD OF ANY PRIOR PARTICIPATION IN A DIVERSION PROGRAM, AND ANY OTHER INFORMATION NECESSARY TO DETERMINE ELIGIBILITY TO PARTICIPATE IN THE DIVERSION PROGRAM.

II. ELIGIBILITY FOR PARTICIPATION

A. UPON CONSENT OF BOTH THE COUNTY ATTORNEY AND THE ACCUSED THE JUDGE MAY APPROVE PARTICIPATION IN THE DIVERSION PROGRAM FOR ANY INDIVIDUAL WHO MEETS THE REQUIREMENTS IN SECTION I UNLESS THE JUDGE IS OF THE OPINION THAT DIVERSION IS INAPPROPRIATE.

B. UPON APPROVAL FOR PARTICIPATION IN THE DIVERSION PROGRAM THE ACCUSED MUST SIGN A STATEMENT WAIVING HIS/HER RIGHT TO A SPEEDY TRIAL. PRIOR TO SIGNING SUCH STATEMENT THE ACCUSED SHALL BE GIVEN THE

OPPORTUNITY TO CONSULT WITH AN ATTORNEY IF HE/SHE SO DESIRES.

- C. PARTICIPATION BY AN ACCUSED IN THE DIVERSION PROGRAM SHALL NOT CONSTITUTE AN ADMISSION OR PRESUMPTION OF GUILT OF THE CHARGE AND SHALL NOT BE PROOF OF GUILT IN ANY SUBSEQUENT LEGAL ACTION. HOWEVER, NOTHING CONTAINED IN THIS PARAGRAPH SHALL ALTER OR EFFECT THE DIVERTEE'S OBLIGATION TO PERFORM ALL TERMS OF THE DIVERSION CONTRACT, INCLUDING RESTITUTION, WHERE AGREED.**
- D. UPON APPROVAL FOR PARTICIPATION IN THE DIVERSION PROGRAM, THE JUDGE SHALL NOTE ON THE COURT DOCKET ANY SPECIAL TERMS WHICH HE/SHE IS REQUIRING TO BE INCLUDED IN THE DIVERSION CONTRACT.**

III. THE DIVERSION CONTRACT

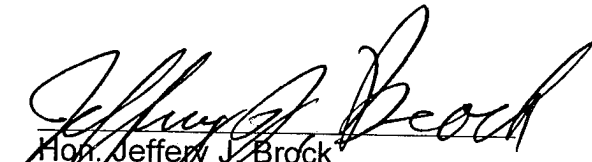
- A. UPON APPROVAL OF PARTICIPATION IN THE DIVERSION PROGRAM THE ACCUSED SHALL MEET WITH THE DIVERSION OFFICER TO ESTABLISH AND AGREE TO A FORMAL CONTRACT WHICH WILL SPECIFY THE CONDITIONS REQUIRED; THE REFERRAL SERVICES (IF ANY) TO BE USED, THE LENGTH OF THE CONTRACT AND THE NEED, IF ANY, FOR THE ACCUSED TO MAKE REQUIRED RESTITUTION OR PERFORM COMMUNITY SERVICE. THE CONTRACT SHALL BE PRESENTED FOR FINAL APPROVAL TO THE JUDGE AND UPON ITS FINAL APPROVAL, THE TERMS OF THE DIVERSION SHALL COMMENCE. THE DIVERSION CONTRACT SHALL CONTAIN ANY SPECIAL TERMS REQUIRED BY THE JUDGE.**
- B. THE NORMAL CONTRACT ON EACH ACCUSED SHALL BE FOR A PERIOD OF SIX MONTHS TO TWO YEARS AT THE DISCRETION OF THE JUDGE.**
- C. THE DIVERTEE MUST COMPLY WITH ALL PROVISIONS OF THE DIVERSION CONTRACT. VIOLATION OF CONTRACT PROVISIONS WILL SUBJECT THE INDIVIDUAL TO TERMINATION OF DIVERSION PARTICIPATION AND REDOCKETING OF THE CHARGE FOR CRIMINAL PROSECUTION.**

- D. IF THE ACCUSED DOES NOT COMPLY WITH CONDITIONS OF HIS/HER DIVERSION CONTRACT THE JUDGE MAY ORDER TERMINATION OF ACCUSED'S PARTICIPATION IN THE PROGRAM.
- E. UPON TERMINATION FOR NON-COMPLIANCE, THE COUNTY ATTORNEY SHALL INITIATE PROSECUTION OF THE ACCUSED UPON THE ORIGINAL CRIMINAL CHARGE(S).
- F. UPON SUCCESSFUL COMPLETION OF THE DIVERSION CONTRACT THE FORMAL CRIMINAL CHARGE, OUT OF WHICH THE DIVERSION CONTRACT AROSE, SHALL BE FORMALLY DISMISSED WITH PREJUDICE.

IV. ADMINISTRATIVE FEES

THE FEE FOR PARTICIPATION IN THE PROGRAM SHALL BE IN AN AMOUNT SET BY THE DIRECTOR OF ADMINISTRATIVE OFFICE OF THE COURTS. THE COURT MAY ASSESS THE FEE ON A SLIDING SCALE BASED UPON ABILITY TO PAY OR WAIVE THE FEE ENTIRELY IN THE CASE OF INDIGENCE.

Submitted by:


Hon. Jeffery J. Brock
District Judge
District 26 Harlan

HAVE SEEN AND APPROVED:

Dana Cox Nichols
